

Protest of) Date: October 30, 1992
)
 CONTRACT TRANSPORT, INC.)
)
 Solicitation No. 503-140-92) P.S. Protest No. 92-66

DECISION

Contract Transport, Inc., protests the cancellation after bid opening of Solicitation No. 503-140-92, issued by the Des Moines Transportation Management Service Center (TMSC) for the transportation of mail between a printing plant in Nevada, IA, and two Des Moines, IA, locations.

The solicitation, issued on July 2, 1992, called for the transportation of mail on an "as-needed" basis between the Donnelly Plant, Nevada, IA, and the Des Moines Bulk Mail Center (BMC) (which the solicitation's "Statement of Service," Attachment A, describes as "Part A"), and between the plant and the Des Moines Airport (described as "Part B"). The solicitation described each route^{1/} and estimated forty BMC and two airport trips per 28-day accounting period.^{1/} Bids were to be expressed as a "per trip" rate.

Thirteen bidders responded to the solicitation. Six of the bidders offered two prices; a lower price for the BMC trip, and a higher price for the airport trip. Seven bidders offered a single price per trip without differentiating between the trips. Contract Transport offered the lowest prices for the individual trips, while Rowland Transport, Inc., offered the lowest price of the bidders who bid a single price. Extrapolated based on the estimated mix of trips per accounting period, Rowland Transport's price was very slightly lower than Contract Transport's price.^{1/}

^{1/} According to the solicitation, the round trip distance between the plant and the BMC was about 96 miles, and two and one-half hours transit time will be allocated for the round trip; the round trip distance between the plant and the airport/metro area was about 92 miles, and four hours transit time will be allocated.

^{2/} Elsewhere, the solicitation "guaranteed" 546 total trips per year, but noted that there was "a potential for an estimated maximum of 784 [trips] per year. Trips could occur on any day on four hour's notice, and five or more trips per day could be needed, but the contractor had no obligation to perform more than five trips per day.

^{3/} Contract Transport's bid worked out as follows:

40 BMC trips at \$76.75 = \$3,070.00

After bids were received and opened, the solicitation was canceled. The solicitation amendment which accomplished the cancelation advised that "the information furnished in the solicitation as it relates to determining the round trip bid rate was ambiguous," necessitating the cancellation. Contract Transport's timely protest followed.

The protester advises that upon receipt of the solicitation, and knowing that previous emergency solicitation for this service had been bid on the basis of different trip rates for the service, he inquired of the TMSC, and in the words of the protest, "verified with the TMSC the fact that I should submit a rate for Part A and a rate for Part B." After bids were opened, the protester inquired and was told that award was intended to go to Rowland Transport, because its price per accounting period, as calculated above, was lower than Contract Transport's. The TMSC had confirmed with Rowland its understanding that its per trip rate applied to both routes.

The protester notes that the airport trip, which involves a longer trip time, will require the payment of more Service Contract Act wages, and calculates those wages (\$75.88) as approaching Rowland Transport's total per trip bid. He contends that the TMSC erred in contacting Rowland to verify that its per trip rate applied to both routes, and further erred in subsequently canceling the solicitation. The protester complains that canceling the solicitation after bids were exposed is unfair to the bidders, since the Postal Service received reasonable bids from the bidders.

The contracting officer's statement asserts that TMSC personnel gave conflicting advice to prospective bidders whether one rate or two should be bid, and that the solicitation was ambiguous in failing to state the TMSC's intention that only one rate was required.

Discussion

Procurement Manual (PM) 12.7.7 governs the cancellation of advertised solicitations such as this after bids have been exposed. It provides, in part, as follows:

To preserve the integrity of the advertised sealed bidding system, award must be made to the responsible bidder submitting the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the solicitation. Every

2 airport trips at \$103.30 =	<u>\$206.60</u>
Total	\$3,276.60

Rowland Transport's bid worked out as:

42 trips at \$77.34 =	\$3,248.28
-----------------------	------------

effort must be made to ensure that changes in requirements so significant as to require cancellation of a solicitation are identified in advance of the bid opening, so that the solicitation may be canceled before the bidder's rates are disclosed. Consistent with this, a solicitation may be canceled after the opening of bids only when the contracting officer determines in writing that:

(a) Inadequate or ambiguous specifications were cited in the solicitation;

* * * or,

(f) For other reasons, cancellation is clearly in the interest of the Postal Service.

As we have noted a recent case involving similar facts:

We have held that a contracting officer's determination to reject all bids will not be disturbed by this office unless it is shown to be arbitrary or capricious. Jones E. Davis, P.S. Protest No. 81-57, March 23, 1982; Grant Rental, Inc., P.S. Protest No. 79-29, August 1, 1979. We have also said that a misleading solicitation calls for cancellation because the requirement for full and fair competition is not satisfied. Bob Sullivan Chevrolet-Cadillac Company, P.S. Protest No. 76-30, August 13, 1976.

Ebony Express, Inc., P.S. Protest No. 92-27, July 7, 1992.

Here, the solicitation provided no clear information whether individual rates were sought for the two significantly different trips or whether one rate applicable to either route was sought. On balance, the solicitation appears to favor slightly the provision of a single rate, since it does provide, at paragraph 9 D. that "All bids must be expressed as a[] per trip rate," not "as per trip rates," and because the solicitation contains no explanation how bids containing two different rates would be evaluated for award. That the solicitation was less than clear in this regard, however, is amply demonstrated by the even distribution of the bids received; half offered one trip rate, half offered two. If, as the contracting officer's statement indicates, this outcome was further affected by inconsistent advice given by TMSC personnel as to the outcome intended, the cancellation was adequately justified both on the grounds of ambiguity and on the further ground that it was in the interest of the Postal Service to correct the incorrect advice.

We find the contracting officer's determination here to have been neither arbitrary nor capricious. Rather, from the evidence the contracting officer could have reasonably concluded that the solicitation was misleading because of ambiguity.

The protest is denied.

For the General Counsel:

William J. Jones